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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 14-0196 CRB
)	
Plaintiff,)	UNITED STATES' MOTION TO RE-SCHEDULE
)	MOTIONS HEARING DATES AND ORDER
v.)	
)	
KWOK CHEUNG CHOW, a/k/a "Raymond)	
Chow", a/k/a "Hai Jai", a/k/a "Shrimpboy", et.)	
al.)	
)	
Defendants.)	
)	
)	

On August 27, 2015, defendant Chow filed two motions: Motion to Exclude Agents' Recollections or Defendant's Statements for Failure to Preserve / Destruction of Evidence (document 935) and Notice of Motion and Motion for Revelation and Production of Confidential Informants (document 936). Chow noticed the former motion for hearing on September 16, 2015 at 2:00 p.m. and the latter motion for hearing on September 9, 2015 at 2:00 p.m. For the reasons stated below, the

1 government respectfully requests that the Court change the hearing date on both motions to September
 2 28, 2015 at 9:30 a.m., the date currently scheduled for the pretrial conference and hearing on motions in
 3 *limine*.

4 **DISCUSSION**

5 When the parties appeared before the Court on July 7, 2015, the Court set the instant case for
 6 trial on November 2, 2015 as to Chow and seven other defendants. At the request of the parties, the
 7 Court scheduled a hearing on Rule 12 motions for September 9, 2015 at 9:30 a.m. and the hearing on
 8 any motions in *limine* for September 28, 2015 at 9:30 a.m. The Court declined to set a briefing
 9 schedule, and instead directed the parties to work out a schedule among themselves.

10 At a meet and confer session held on July 16, 2015, government counsel met with counsel for
 11 defendants Chow, Nieh, Chiu, Chanthavong, Li, Yun, and Pau to discuss discovery matters and agree
 12 upon briefing schedules for filing of motions to be heard on September 9, 2015 and September 28, 2015.
 13 *See*, Declaration of Susan Badger (hereafter “Badger Dec.”), Exhibit 1, attached, at ¶¶ 2-3. As
 14 memorialized in an e-mail from government counsel the following day to all counsel who attended the
 15 meeting, as well as to counsel for defendant Siu, the briefing schedule that was agreed upon was as
 16 follows:

- 17 • For the hearing on September 9, 2015, motions would be filed on August 12; responses
- 18 would be filed on August 26; and replies would be filed on September 2.
- 19 • For the hearing on September 28, 2015, motions would be filed on September 9;
- 20 responses would be filed on September 18; and replies would be filed on September 22.

21 Badger Dec. at ¶ 5; E-mail attached to Badger Dec., dated July 17, 2015.

22 In addition, at the meet and confer session, counsel for Chow advised that he might be filing a
 23 motion for discovery to be heard in advance of the dates set by the Court for hearing on Rule 12 motions
 24 and motions in *limine*. Government counsel asked that Chow’s counsel consult with government
 25 counsel about a hearing date and briefing schedule, and Chow’s counsel agreed to do so. Badger Dec.,
 26 at ¶ 4.

27 With one exception for Li’s counsel, who required additional time for medical reasons to file
 28 Rule 12 motions, all parties except Chow have thus far filed pleadings in accordance with the

1 agreements reached at the meet and confer session on July 16, 2015. Despite this agreement, as well as
2 an agreement to confer on any additional hearing dates and briefing schedules for those hearings, on
3 August 4, 2015, Chow filed a Notice of Motion and Motion to Dismiss for Selective Prosecution, and in
4 the Alternative for Discovery, and set the matter for hearing on August 21, 2015 before Magistrate
5 Judge Joseph C. Spero. *See*, Document 883. The Court subsequently moved the hearing date to August
6 27, 2015 and ordered that the matter be heard by the trial Court. The government did not raise an
7 objection to this filing even though counsel did not confer, as agreed, on a briefing schedule or hearing
8 date. Badger Dec., at ¶ 6.

9 Chow has now filed two additional motions that neither comply with the briefing schedule to
10 which he agreed or the hearing dates set by the Court. Chow's motion to exclude testimony about agent
11 recollections pertains to presentation of evidence at trial and should be heard with motions in *limine* at
12 the pretrial conference on September 28, 2015, not on the September 16, 2015 date noticed by Chow.
13 The government requests that the Court re-schedule the hearing on the motion (Document 935) for that
14 date. The government can then file its response in accordance with the briefing schedule to which Chow
15 agreed.¹

16 As to the motion for "revelation and production of confidential informants," (Document 936),
17 Chow noticed the motion for hearing on September 9, 2015 (although not for the time set by the Court
18 for hearing of Rule 12 motions on that date). Chow did not comply with the briefing schedule for
19 motions to be heard on that date, and the government is going to need sufficient time – as Chow agreed
20 to at the meet and confer – to respond to the motion. This is especially the case in light of the fact that
21 the government is preparing to meet the Court's September 1, 2015 deadline for complying with
22 significant discovery productions, providing Rule 404(b) and expert notices to the defense, and filing a
23 draft exhibit list that includes a list of recordings it intends to play at trial. In order to give the
24 government reasonable and sufficient time to respond to Chow's motion regarding informants, the
25 government requests that the hearing on the motion be re-scheduled from September 9, 2015 at 2:00
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27
28 ¹ Chow did not contact government counsel in advance of filing the August 27, 2015 motions to
discuss scheduling the hearing dates or why the briefing schedule was not being adhered to. Badger
Dec., at ¶ 7.

1 p.m. to the pretrial conference and motions hearing on September 28, 2015 at 9:30 a.m. The
 2 government can then file its response in accordance with the agreed-upon briefing schedule for motions
 3 to be heard on that date.

4 CONCLUSION

5 In light of the fact that Chow's motions were not filed in compliance with the agreements entered
 6 into by the parties, and in order to provide the government sufficient and reasonable time to respond and
 7 for Chow to file any replies, the government moves that (1) the hearing on Chow's Notice of Motion
 8 and Motion for Revelation and Production of Confidential Informants, Document 936, be changed from
 9 September 9, 2015 at 2:00 p.m. to September 28, 2015 at 9:30 a.m., and (2) the hearing on Chow's
 10 Motion to Exclude Agents' Recollections of Defendant's Statements for Failure to Preserve /
 11 Destruction of Evidence (Document 935) be changed from September 16, 2015 at 2:00 p.m. to
 12 September 28, 2015 at 9:30 a.m. The government will file its responses to defendant's motions on the
 13 agreed-upon briefing schedule cited above.

14 DATED: August 31, 2015

Respectfully submitted,

15 MELINDA HAAG
 16 United States Attorney

17 /s/
 18 SUSAN E. BADGER
 19 WILLIAM FRENTZEN
 20 S. WAQAR HASIB
 21 Assistant United States Attorneys

22 ORDER

23 Upon the motion of the government, and for good cause appearing, IT IS HEREBY ORDERED
 24 THAT (1) the hearing on defendant Chow's Motion and Motion for Revelation and Production of
 25 Confidential Informants, Document 936, is re-scheduled from September 9, 2015 at 2:00 p.m. to
 26 September 28, 2015 at 9:30 a.m., and (2) the hearing on Chow's Motion to Exclude Agents'
 27 Recollections of Defendant's Statements for Failure to Preserve / Destruction of Evidence, Document
 28 935, is re-scheduled from September 16, 2015 at 2:00 p.m. to September 28, 2015 at 9:30 a.m. The
 government will file any responses to the motions no later than September 18, 2015 and the defendant

1 will file any reply no later than September 22, 2015.

2 IT IS SO ORDERED.

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4 Signed: August 31, 2015



5 CHARLES R. BREYER
6 SENIOR UNITED STATES
7 DISTRICT JUDGE
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